COURT'S ORDER WHETHER THE CASE IS OR IS NOT APPROVED FOR REPORTING

{Chapter VIII, Rule 32(2)(b)}

Description of the Case.

Criminal Appeal No. 822 of 2001
(Old No. 2115 of 1988)

Kulwant Singh S/o Nand Singh
R/o Bareilly Road, P.O. Haldwani,
P.S. Haldwani, Distt. Nainital .... Appellant

Versus

State

... Opposite Party

Sri Kuldeep Rawal, learned amicus curiae for the appellant
Sri Nandan Arya, learned AGA for the State.

Approved for reporting.
Not approved for reporting.

Date: April 12, 2007

(Dharam Veer, J.)

IN THE HIGH COURT OF UTTARAKHAND AT NAINITAL

CRIMINAL APPEAL No. 822 of 2001
(Old No.2115 of 1988)

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R/o Bareilly Road, P.O. Haldwani,
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Dated: April 12, 2007

Sri Kulwant Rawal, learned amicus curiae for the appellant
Sri Nandan Arya, learned AGA for the State

HON. DHARAM VEER, J.

This appeal, under Section 374(2) of the Code of Criminal Procedure, 1973 (hereinafter referred as **Cr.P.C.**), has been preferred by the appellant against the judgment and order dated 30.8.1988 passed by Special Judge (Additional Sessions Judge, Nainital) in Sessions trial No.09 of 1984, State Versus Sri Kulwant, whereby the learned Special Judge (Addl. Sessions Judge) Nainital convicted the appellant under section 324 I.P.C. and has awarded a sentence for two years rigorous imprisonment.

2. In brief the prosecution story is this on 12.1.1983 at about 8:30 p.m. accused assaulted first Dinesh and thereafter Chandra Prakash alias Tomi with knife at his house situated at Bareilly Road, Haldwani, Police Station, Haldwani. He did this act with such intention and knowledge in such circumstances that if by that act he had caused the death of Dinesh and Chandra Prakash and he would have been guilty of murder. This occurrence was seen by Shri Om Prakash. He went to the house of injured Dinesh and informed about this incident to his father Shri Ram Charan. On his information Shri Ram Charan requested Shri Kishan Saxena to prepare an application and the

application was submitted to the Police Station Haldwani. On this application chick F.I.R. u/s 307 I.P.C. was prepared and case under section 307 IPC was registered against the accused Kulwant Singh. Injured Dinesh and Chandra Prakash were medically examined. After the investigation, charge sheet under section 307 I.P.C. was submitted against the accused in the court of Judicial Magistrate, Haldwani. The learned Judicial Magistrate, Haldwani after complying with the provisions of the law committed the case to the court of Sessions.

3. A charge under section 307 I.P.C. was framed against the accused/appellant by the trial court and this was read over to the accused. He pleaded not guilty and claimed to be tried, therefore, prosecution was directed to adduce its evidence.

4. The prosecution examined Chandra Prakash alias Tomi as P.W.-1, who is an injured person. He stated that on 12.1.1983 at 8:30 p.m., he along with Dinesh went to the house of Kulwant Singh because Dinesh was liable to give some money to accused. He wanted time of two or four days for the payment of this money to accused but accused did not conceded to his request and insisted for payment of money at that time. He also became angry and brought knife and he inflicted injuries with his knife on the shoulder of Dinesh. He tried to save Dinesh but accused also stabbed him with the knife. Dinesh became injured and ran away from the spot but he fell down on the spot. Thereafter, the accused ran away by abusing these injured persons. He became unconscious on the spot and police came and thereafter the police brought

him to the hospital. He was medically examined in the hospital and he became disabled person. He also filed certificate of his disability and that certificate has been proved by him, which has been marked as Ex.Ka-1.

5. P.W.-2 Dinesh has also been examined and he is also an injured person and supported the version of P.W.-1 Chandra Prakash. He proved the signature of his father made on application dated 12.1.1983, that has been marked as Ex.Ka-2. He also stated that he was also medically examined in the hospital.

6. P.W.-3 Om Prakash has stated that at the time of occurrence he was standing at the betel shop which was just adjacent to the spot. He heard human cry ,therefore, he rushed to the spot. He saw accused Kulwant Singh inflicting injuries with knife on Dinesh and Chandra Prakash. He went to the house of Dinesh and informed about this incident to his father Shri Ram Charan.

7. P.W.-4 Dr. P.H. Gupta has stated that on 12.1.1983 he was posted as Medical Officer in civil hospital Haldwani at 9.45 P.M. he examined the injuries of Dinesh who was brought to him by S.I. N.D. Tiwari. He found following injuries on is body.

> *(1) Stab wound with clean cut margins 2 cms.x1.2 cm.x.2.5 cm. over the leaft lower part of neck. 3.5 cm. above the collar bone, the wound is directed downwards. (v/o sharp.*

8. The injury report was also prepared by the doctor which has been marked as Ex.Ka-3. He also examined the injuries on the body of Chandra Prakash on 12.1.1983 at 10:15 P.M. who was brought to him by

S.I. N.D. Tiwari. He found following injuries on his body:

(1) *Incised wound bleeding 2½ cm.x 0.7 cm.x muscle deep transversely over the back middle and left part of the neck. V/o sharp.*

(2) *Incised wound bleeding 1½ cm.x0.5 cm.X muscle deep oblique over the outer and upper part of left thigh. Simple sharp.*

(3) *Abrasion 1 cm.X1 cm. over the outer and middle part of the right arm simple friction.*

(4) *.4 abrasions each measuring 0.2 cm. x.2 cm. in an area of 10 cm.X 5 cm. over the left lower part of the chest. Simple friction.*

9. He prepared injury report. He proved that report, that has been marked as Ex.Ka-4. He came to the conclusion that these injuries were inflicted on them by come sharp weapon.

10. P.W.-5 Mohan Singh is the eye witness of the occurrence. He saw accused Kulwant Singh stabbing Sri Dinesh and Chandra Prakash with knife and after this accused ran away from the spot. Chandra Prakash after getting injuries fell on the spot. This witness was again recalled far re-examination on 2.4.1985. He has stated on 12.1.1983 at 9.00 or 10.00 P.M. he went to the spot with Sub-inspector at his instance. S.I. prepared site plan and also took simple earth and blood stained earth from the spot. He prepared the recovery memo for this thing. He proved his signature on recovery memo, which is Ex.Ka-5. In his presence S.I. did not recovery any weapon from the possession of accused. On this point this witness was declared hostile witness.

11. P.W.-6 Sukdev did not support the prosecution story and he was declared hostile witness.

12. P.W.-7 Khayali Ram has stated that on 12.1.1983 he was posted as Clerk Constable in the P.S. Haldwani at 9.30 P.M. Shri Ram Charan submitted an written application to him. On the basis of the said written application he prepared chick F.I.R. and also reported this matter in G.D.No. 79 dated 12.1.1983. He proved the above-said Chik F.I.R. Ex.Ka-6 and G.D.Ex.Ka-7. He also proved the hand writing of Head Moharrior Sri Irsad Ahmad who prepared G.D.No.3 dt. 13.1.1983, that has been marked as Ex.Ka-8.

13. P.W.-8 Kishan Saxena has stated that he prepared Ex.Ka-2 at the direction of Shri Ram Charan. He also proved his signature on this application dated. 12.1.1983. He has also stated that in his presence accused gave knife to the Investigating officer and he stated that with this knife he committed this crime. A Fard recovery memo relating to the recovery of this knife was prepared by S.I. in his presence. He also signed it, he proved his signature on the recovery memo that has been marked as Ex.Ka-9.

14. P.W.-9 N.D. Tiwari S.I. investigated the case. He has stated that on 12.1.1983 he alongwith other police officials was on patrol duty. At 9.20 P.M. he reached Chowki Mangal Parao there he saw Dinesh injured in running position. Dinesh came to the Chowki and fell down. He brought him to the hospital. He was fully conscious. When he was in the hospital in the meantime Constable Sishupal came with the copy

of chick F.I.R. alongwith Sri Ram Charan and Kishan Saxena. There they saw that Chandra Prakash was lying on earth and blood was coming from his body. He brought him to civil hospital and he was medically examined. He prepared site plan of the spot, that has been marked as Ex.Ka-10. He also took simple earth and blood stained earth from the spot and prepared Fard for these things, that has been marked as Ex.Ka-5. He proved that simple earth and blood stained earth. He also stated that he arrested accused at 11.20 P.M. He took his statement. In presence of the witness, accused confessed his guilt and stated to give his knife with which he committed this crime. On this indication they went into his house there he handed over this blood stain knife to him. This was taken into custody. This was sealed on the spot. A Fard recovery memo relating to this knife was prepared. He identified this knife, that has been marked as Ex.1.He also prepared that recovery memo which has been marked as Ex.Ka.-9. He brought the accused alongwith knife to the police station after that he submitted charge sheet in the court of Judicial Magistrate, Haldwani against the accused under Section 307 I.P.C. He prepared that charge sheet, that has been marked as Ex.Ka-11, thereafter, the prosecution closed its evidence and the statement of the accused was recorded under Section 313 Cr.P.C. He stated that he has been falsely implicated in this case. He was called by the police officer from his house and after that he was arrested. He examined Sri Bhagwan Das D.W.-1 who has stated that he has betel shop just adjacent to the spot of the occurrence. On that this type of occurrence did not occur. His shop remained open till 10.00 P.M. He closed his evidence. After going through

the evidence, the learned Additional Sessions Judge/Special Judge (Additional Session Judge, Nainital has convicted the accused/appellant under Section 324 I.P.C. and sentenced him to two years R.I. Against the said order, the appellant has filed this appeal before this court.

15. I have heard Shri Kuldeep Rawal, learned amicus curaie for the appellant and Sri Nandan Arya, learned AGA for the State and perused the entire evidence available on record.

16. The present incident has said to be taken place on 12.1.1983 at 8:30 P.M. at Bareilly Road Haldwani and the F.I.R. was lodged on 12.1.1983 at 9:30 P.M. The entry was made in G.D. No. 79 at 21:30 P.M. The chick F.I.R. Ex.Ka-6 and G.D. entry as Ex.Ka-7 and the written F.I.R. by Shri Ram Charan is Ex.Ka-2. Dr.P.H. Gupta have examined the injured Dinesh Kumar at 9:45 P.M. on 12.1.1983 and injured Chandra Prakash was examined at 10:15 P.M. on 12.1.83. The injury report is Ex.Ka-3 and EX.Ka-4. The accused was also arrested on the same day on 12.1.1983 at 11:20 P.M. After that the accused has stated the police that he can give that knife with which he has caused the injuries to Dinesh and Chandra Prakash. Thereafter the police took him to his house and in front of his house adjoining to the western wall of Flour Mill under the wood box, the accused has given that knife with blood stained to the police on 12.1.1983 and then a recovery memo was prepared by the police that is Ex.Ka-9.

17. P.W.-1 Chandra Prakash the injured has stated that on 12.1.1983 at 8:30 P.M. when he went to the house of Kulwant Singh/accused alongwith Dinesh there was some money of the Kulwant due on Dinesh, that is why Dinesh has gone to his house to request him to give some more time for the arrangement of the money. But the accused refused to accept his request and had told that you have to give the money today, please give my money today and in this conversation, the accused annoyed and with the knife, he caused the injuries to Dinesh. When this P.W.-1 Chandra Prakash has tried to save Dinesh then the accused Kulwant has also inflected injuries by knife to Chandra Prakash. Dinesh has ran away but he fell down on the spot and became unconscious. The accused has also ran away after abusing the injured Dinesh. After some time the police has taken this injured from the spot. Due to this injury he has become a disabled person. He has also filed a certificate of his disability that is Ex.Ka-1.

18. P.W.-2 Dinesh Kumar is also an injured witness. He has stated that on the said dated 12.1.1983 at 8:30 P.M. he alongwith Chandra Prakash has gone to the house of Kulwant Singh. He had gone there to request the Kulwant to give some more time to pay the money but Kulwant has annoyed and said that give me my money just now and he caused the injuries to him with knife. When Chandra Prakash has tried to save him then he has ran away from there and the accused has also caused the injury to Chandra Prakash with knife. Later on this injured was examined by Medical Officer at hospital Haldwani. He has also stated that his father Ram Charan has died. He has also stated

that when his father is came to meet him at Haldwani hospital then he has stated the total incident to him. He has also identify the signature of his father on Ex.Ka-2.

19. P.W.-3 is the Om Prakash who has stated that on the said date i.e. 12.1.1983 at 8:30 P.M. he heard the cries then he saw that the accused have caused the injury on Dinesh and Chandra Prakash by knife. After this Dinesh has ran away from the spot in an injured condition and Chandra Prakash has fallen down on the spot. He has also stated that the father of Dinesh Shri Ram Charan was known to him and he has informed the said incident to Ram Charan.

20. P.W.-4 Dr. P.H. Gupta, who has medically examined Dinesh and Chandra Prakash. He has proved the injury reports Ex.Ka-3 of Dinesh. He has stated that injury was fresh and caused by sharp edged weapon like knife. He has also proved the injury report of Chandra Prakash. He has also stated that the injured was brought by S.I., N.D. Tiwari. He has also stated about the injury at Chandra Prakash that the injury No. 1 was kept under observation and this injury was caused by sharp edged weapon like knife and injury Nos. 2 to 4 are simple and injury No. 2 is also possible by knife i.e. sharp edged weapon. Injury No. 3 and 4 is also possible by friction and he has also proved the injury Ex.Ka-4. Dr. P.H. Gupta has stated that the injuries on the body of Chandra Prakash and Dinesh are possible to come on 12.1.1983 at 8:30 P.M.

21. P.W.-5 is Mohan Singh he is also an eye witness. He has stated that on that day in the night at about 8

to 9 P.M. he has seen Kulwant Singh accused Dinesh and Chandra Prakash who were talking to each other in a high tone. Kulwant Singh has caused injuries with knife to Dinesh. When Chandra Prakash has tried to save Dinesh then Kulwant Singh has also attacked on Chandra Prakash with knife and caused injuries to Chander Prakash. Dinesh has run away after receiving of the injuries and Chandra Prakash fell down on the spot, and accused also ran away from the spot.

22. P.W.-6 Sukh Dev Singh was examined who was declared hostile.

23. P.W.-7, Khyali Ram, Constable Clerk was examined, who stated that on 12.1.1983 he was posted as Clerk Constable in police station Haldwani on 12.1.1983 at 9:30 P.M., Ram Charan son of Ram Swaroop has given a report Ex.Ka-2 in the police station. On the basis of this report he has prepared the chick report that is Ex.Ka-6 and he has also mentioned in the G.D.No. 79 dated 12.1.1983, copy of G.D. is Ex.Ka-7. He has also proved the Ex.Ka-8.

24. P.W.-8 Mr. Kishan Saxena who is the subscriber of the F.I.R. he has proved the Ex.Ka-2 and he has stated that the Ex.Ka-2 was written by him and he has written this Ex.Ka-2 on the dictation of Ram Charan whatever, Ram Charan has said he has written. He has also stated that the accused Kulwant Singh has stated that the can give the knife with which he has caused the injury to Dinesh and Chandra Prakah. After that Kulwant Singh has given the knife just taken out under the wood box that was lying in the West Wall of the Atta Chakki in front of accused

Kulwant's house and for that the police sub inspector has prepared Fard, Ex.Ka-9. He has also proved the Ex.-1 knife in the Court.

25. P.W.-9 N.D Tiwari is the investigation Officer who after the investigation had submitted the charge sheet.

26. After the evidence of Prosecution is closed the accused was examined under section 313 of the Cr.P.C. The Accused has denied the allegation of the prosecution. He has examined D.W.-1 Bhagwan Das.

27. From the above evidence discussed above it is proved beyond reasonable doubt that accused Kulwant has caused the injuries with knife to Dinesh and Chandra Prakash on 12.1.1983 at 8:30 P.M.at Bareilly Road Haldwani. The learned Session Judge has rightly convicted the accused appellant under section 324 I.P.C. I am with the full agreement with the Judgment and order passed by the learned Special Judge (Additional Sessions Judge) Nainital dated 30.08.1988.

28. Learned Amicus Curiae who has appeared on behalf of the appellant has confined his argument only for sentence. So far as the conviction part is concerned, learned Amicus Curiae has also conceded this point and for the conviction point he does not want to argue but for sentence he has submitted that appellant is sick and an infirm person and he is a poor man and his wife and children are there and nobody is there in his family to earn for the livelihood for his wife and children and that is his first offence and hence he submitted that a lenient view may be taken for the sentence. He has also submitted that the accused was

in jail from 12.1.1983 to 29.1.1983 and he was also in jail with connected with this offence from 26.9.2003 to 14.11.03 and he has also submitted that the accused is now in jail since 27.11.2006. In my opinion one-year sentence will serve the ends of justice and will be sufficient to the said crime committed by the accused/appellant.

29. The appeal is accordingly partly allowed. The conviction part under Section 324 I.P.C. is confirmed and sentence is modified up to the extent that instead of two years R.I., the appellant shall serve one year rigorous imprisonment. The period already undergone by the appellant shall be adjusted after verifying from the records.

30. Let the record of the case be sent to the trial court concerned for compliance of order.

(Dharam Veer, J.)

Rajeev Dang